

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA and
BELDEN GRANADA, Revenue Officer,

Petitioners,

v.

ROBERT D. UDOVICH,

Respondent.

Case No.: 10-CV-04094-LHK

ORDER GRANTING VERIFIED
PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS

This matter is before the Court on an Order to Show Cause why Respondent Robert Udovich should not be ordered to comply with the summons issued by the Internal Revenue Service (IRS). Respondent failed to respond to the Court's Order to Show Cause and did not appear at the hearing held on December 16, 2010. Having considered the instant Verified Petition and the relevant legal authority, the Court GRANTS Petitioner's Verified Petition to enforce the IRS summons issued to Respondent.

The IRS may issue a summons for the purpose of "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax . . . , or collecting any such liability." 26 U.S.C. § 7602(a). In order to enforce a summons, the government must establish that the summons (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information not already in the IRS's possession; and (4) was issued in compliance with all the administrative steps required by the

Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *Crystal v. U.S.*, 172 F.3d 1141, 1143-44 (9th Cir. 1999). The government's burden is slight and may be satisfied by a declaration by the investigating agent that the *Powell* requirements have been met. *Crystal*, 172 F.3d at 1144. Once the government has met its burden under *Powell*, the party opposing enforcement bears the "heavy" burden of "disprov[ing] the actual existence of a valid civil tax determination or collection purpose by the Service." *United States v. Jose*, 131 F.3d 1325, 1328 (9th Cir. 1997) (quoting *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 316 (1978)). In order to successfully challenge an IRS summons, the taxpayer must allege specific facts and evidence to support his allegations of bad faith or improper purpose on the part of the IRS. *Jose*, 131 F.3d at 1328.

Here, Petitioners have satisfied the requirements set forth in *Powell*. First, the Verified Petition indicates that the summons was issued for the legitimate purpose of attempting to obtain records needed to prepare a Collection Information Statement for Respondent for calendar years 2002 and 2003. Pet. ¶ 3. Second, the summons seeks records, paper, and other data regarding income, assets, and liabilities that are relevant to and can reasonably be expected to assist in the ascertainment and collection of Respondent's tax liabilities. Pet. ¶¶ 4, 6, 8. Third, the Verified Petition declares that Petitioners do not otherwise have access, possession, or control of this information. Pet. ¶ 6. Finally, the Verified Petition states that all administrative steps required by the Internal Revenue Code for issuance of the summons have been taken, and there has been no referral to the Department of Justice for criminal prosecution of the matters described in the summons. Pet. ¶¶ 12, 13.

The Petition and attached certificate of service indicate that Respondent was served with the summons on April 15, 2010, at his last and usual place of abode. Pet. ¶ 7, Ex. A. After Respondent failed to appear at the time and place designated in the summons, Petitioners provided him with a second opportunity to comply. Pet. ¶¶ 9-10. Petitioner did not appear at the second appointment and has not complied with the summons. Pet. ¶ 11. Although Petitioners served Respondent with the Court's Order to Show Cause on October 14, 2010, Decl. of Alice S. Badilla in Supp. of OSC, ECF No. 6, and sent him a letter of reminder on December 2, 2010, Case

1 Management Conference Statement 1, ECF No. 7, Respondent has failed to respond with any
2 arguments or allegations as to why the summons should not be enforced.

3 Accordingly, the Court GRANTS Petitioners' Verified Petition to Enforce IRS Summons.
4 The Court orders Respondent Robert Udovich to appear before Revenue Officer Belden Granada,
5 or any other designated agent, on **January 6, 2011, at 10 a.m.**, at the Offices of the Internal
6 Revenue Service located at **55 South Market Street, San Jose, CA 95113** to provide testimony
7 and produce the documents and records requested by Petitioners.

8 Petitioners shall serve this Order on Respondent on or before December 28, 2010, and file
9 proof of service with the Court.

10 **IT IS SO ORDERED.**

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12 Dated: December 16, 2010

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15 LUCY H. KOH
16 United States District Judge
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